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EXAMINER				
PRONE, JASON D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/658,338

**Applicant(s)**

BOSSE, MICHAEL W.

**Examiner**

Jason Prone

**Art Unit**

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Please see paragraph 1 of the previous rejection.
3. Claim 17 and 18 recite the limitation "said metal stock" on line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15-18, 21, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo (6,308,934) in view of Harpell (6,098,292) and Fried (3,219,316). Regarding claims 15, 16, 21, and 28, Gallo discloses the invention including an elongated bar having a first and second end positioned along a vertical reference axis (12), a cutting tool having leading and trailing edges and top and bottom surfaces (24), a tool piece extending from the second end and is axially aligned with the bar (18), a first impact collar disposed on the bar near the first end and substantially near the trailing edge so as to form a space between the first collar and the trailing edge

(16), a second impact collar disposed near the second end (14), a weight slidably disposed between the collars (30), the tool piece comprises a length of metal stock (18), and the top surface of the cutting tool is tapered along the leading edge (24).

However, with regards to claims 15, 17-19, and 25-28, Gallo fails to disclose the cutting tool being a generally flat plate having an axially aligned leading and trailing edges, the bar being joined to the cutting tool generally centered on the top surface between the leading and cutting edges and forms an angle to the vertical reference axis, the cutting tool has at least one groove formed on the top surface and the bottom surface, the grooves extending transversely across, the trailing edge forms an angle to the vertical reference axis angle between 15° and 45°, the tool piece is removable, the metal stock is square, and the metal stock is tapered to define a blade.

Harpell teaches it is old and well known in the art of removal tools to incorporate a cutting tool that is a generally flat plate (3) having an axially aligned leading and trailing edges (5, 11), the bar being joined to the cutting tool generally centered on the top surface between the leading and cutting edges and forms an angle to the vertical reference axis (Fig. 1), the cutting tool has at least one groove formed on the top surface (in-between 21 and 7) and the bottom surface (41), the grooves extending transversely across (Figs. 3 and 8), and the trailing edge forms an angle to the vertical reference axis angle between 15° and 45°(column 5 lines 32-42). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Gallo with the cutting tool, as taught by Harpell, because all claimed elements were known in the prior art and one skilled in the art could have combined the elements

as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

Fried teaches it is old and well known in the art of removal tools to incorporate a tool piece that is removable (11), the metal stock is square (16), and the metal stock is tapered to define a blade (13). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Gallo with the tool piece, as taught by Fried, because all claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo in view of Harpell and Fried. Gallo in view of Harpell and Fried disclose the invention including a threaded set screw aperture formed in the bar (Fig. 1 in Fried), a set screw (43 in Fried), and that the tool piece is retained by the set screw (Fig. 1 in Fried).

However, Gallo in view of Harpell and Fried fail to disclose a tool piece receptacle defined in the second end of the bar and the tool piece is retained in the receptacle by the set screw.

The examiner takes Official notice that it is old and well known in the art of tool connections for the bar to incorporate the receptacle rather than the tool piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bar incorporate the tool piece receptacle, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the

art. *In re Einstein*, 8 USPQ 167. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Gallo in view of Harpell and Fried with the tool piece/bar connection because the substitution of one known element for another would have yielded predictable results and all claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

7. Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo in view of Harpell and Fried applied to claim 15 above, and further in view Lampe (6,213,527). Gallo in view of Harpell and Fried disclose the invention but fail to disclose the leading edge of the cutting tool is bifurcated to form a v-shaped cutting slot, the top surface is tapered along the leading edge, the top surface of the cutting tool is tapered along the trailing edge, and the bottom surface is curved at the leading edge. Lampe teaches it is old and well known in the art of removal tools to incorporate the leading edge of the cutting tool is bifurcated to form a v-shaped cutting slot (16), the top surface is tapered along the leading edge (Fig. 3), the top surface of the cutting tool is tapered along the trailing edge (Fig. 3), and the bottom surface is curved at the leading edge (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Gallo in view of Harpell and Fried with the cutting tool specifics, as taught by Lampe, because all claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by

known methods with no change in their respective function and the combination would have yielded predictable results.

***Response to Arguments***

8. Applicant's arguments with respect to claims 15-28 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571)272-4513. The examiner can normally be reached on 7:30-5:00 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10 March 2008

/Jason Prone/

Primary Examiner, Art Unit 3724